

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KEVIN WILLIAMS,

Plaintiff,

v.

SUPT. MICHAEL D. OVERMYER,
et al.,

Defendants.

Case No. 1:18-cv-98-SPB-RAL

MEMORANDUM ORDER

The instant prisoner civil rights action was received by the Clerk of Court on March 26, 2018 and referred to the undersigned, then a United States Magistrate Judge, for report and recommendation (“R&R”), in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Civil Rules of this Court. On June 13, 2018, Plaintiff filed his Amended Complaint, the operative pleading. ECF No. 18.

In his Amended Complaint, Plaintiff alleges a number of civil rights violations stemming from incidents that occurred at the State Correctional Institution at Forest (“SCI-Forest”), where Plaintiff is incarcerated. First, he alleges due process violations and unlawful retaliation in connection with his receipt of a misconduct for abusive language and his subsequent confinement in disciplinary and administrative custody. Second, Plaintiff alleges civil rights violations in connection with the Defendants’ failure to adequately and accurately respond to inquiries about his administrative custody status. Third, Plaintiff alleges that prison officials violated his rights by failing to comply with their own internal regulations. Fourth, he asserts due process violations in connection with the alleged mishandling of his personal property.

On September 14, 2018, the undersigned was sworn in as a United States District Judge. The case was subsequently transferred to the undersigned as presiding judge and referred to United States Magistrate Judge Richard A. Lanzillo for all pretrial proceedings.

On June 5, 2019, Plaintiff filed a motion for summary judgment. ECF No. 53. Defendants filed a cross-motion for summary judgment on July 22, 2019. ECF No. 62.

On January 22, 2020, Judge Lanzillo issued an R&R recommending that the Plaintiff's motion for summary judgment be denied and Defendants' motion be granted. *See* ECF No. 78. With respect to Plaintiff's due process claim arising from Plaintiff's misconduct and subsequent placement in disciplinary and administrative confinement, the Magistrate Judge opined that Plaintiff had not adduced evidence of a constitutionally protected liberty interest. *Id.* at 7-9. Further, the Magistrate Judge opined that Plaintiff's guilty plea to the misconduct charge foreclosed his retaliation claim, since Plaintiff could not establish that he had engaged in constitutionally protected speech. *Id.* at 9-11. Insofar as Plaintiff complained about the Defendants' misapplication of DOC policy provisions, the Magistrate Judge observed that such misconduct did not implicate any constitutionally protected rights. *Id.* at 11-12. Similarly, the Magistrate Judge observed that no constitutional rights were implicated relative to Plaintiff's averments about the Defendants' failure to respond to correspondence, failure to report his RHU confinement, and/or failure to convey accurate information to Plaintiff's family members. *Id.* at 12. Finally, the Magistrate Judge concluded that Plaintiff had adequate post-deprivation remedies to address the alleged misappropriation of his personal property; thus, his procedural due process claim failed as a matter of law. *Id.* at 12-13.

Plaintiff filed objections to the R&R on February 6, 2020. ECF No. 79. In his objections, Plaintiff contends that the R&R is "flawed" and the recommendation "pre-ordained." *Id.* at 3.

He asserts that Defendants never provided discovery and that they admitted all of his allegations in their answer. Plaintiff makes unsubstantiated allegations that the Defendants “are exercising ex parte communications[] and doing other things that are contrary to the [Rules of Civil Procedure].”

Having fully reviewed and considered the Plaintiff’s objections, the Court finds them to be lacking in merit. Accordingly, after *de novo* review of the complaint and documents in the case, together with the report and recommendation and Plaintiffs’ objections thereto, the following order is entered:

AND NOW, this 14th day of February, 2020;

IT IS HEREBY ORDERED that the motion for summary judgment filed by Plaintiff, ECF No. [53], shall be, and hereby is, DENIED.

IT IS FURTHER ORDERED that the motion for summary judgment filed by Defendants, ECF No. [62], shall be, and hereby is, GRANTED. In accordance with Rule 58 of the Federal Rules of Civil Procedure, JUDGMENT is hereby entered in favor of Defendant Supt. Michael D. Overmyer, Defendant Oberlander, Defendant Sawtelle, Defendant Blich, Defendant Gustafson, Defendant Riettenhouse, Defendant Mahoney, Defendant Termaine, Defendant Trevor Wingard, Defendant Gina, and Defendant Patrice Peterson, and against Plaintiff Kevin Williams, also known as “Kirby Stewart,” with respect to all claims set forth in the Amended Complaint.

Finally, IT IS ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on January 22, 2020, ECF No. [78], is adopted as the opinion of the Court, and Plaintiffs’ objections thereto [79] are OVERRULED.



SUSAN PARADISE BAXTER
United States District Judge

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